

LEGAL ISSUE BRIEF

Issue 1, No. 6, October 2018

Compliance with Statutory Requirements for Political Party Primaries for Sustainable Internal Democracy in Nigeria

Dr. Samuel Oguche

This legal issue brief undertakes an incursion into the legal framework for the conduct of party primaries, and the imperatives of compliance with statutory requirements for sustainable internal party democracy in Nigeria. The All Progressives Congress and the Peoples Democratic Party are mostly used as references, being the two major political parties in Nigeria.

Meaning and Legal Framework for Conduct of Party Primaries

The term “primaries” has been defined by the Electoral Act 2010 (as amended) as an intra-party election by voters of a given political party to nominate candidates for elective office in accordance with a political parties constitution and the law.¹ The definition contains elements of democracy on its own as it has to do with elections. A significant attribute of party primaries as unveiled from the definition is that it is achieved through internal electoral process. Consequently, it is expected that democracy must be seen in practice at the level of party primaries.

The legal framework regulating conduct of party primaries in Nigeria includes the following:

Electoral Act 2010 (as amended)

Conduct of primaries by political parties is regulated by the provisions of the Electoral Act, 2010 (as amended). Being an internal affair of the various political parties, the Act empowers them to conduct primaries for nomination of candidates to the various elective offices, from the office of the President down to the Councillors of an Area Council.

In terms of conduct of party primaries, the Act provides as follows:

- (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.
- (2) The procedure for the nomination of candidates

¹ Section 156 of the Act

by political parties for the various elective positions shall be by direct or indirect primaries.

- (3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.²

Under section 87(9) of the Act, where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue. Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, for redress.³ Construing the words of the foregoing provisions, they are clear and so a combined reading of both provisions show that the onus on a party in order to properly constitute an action is firstly to bring himself within the definition of an “aspirant” as contemplated under the Electoral Act, 2010 (as amended). This is founded on the principle that he who alleges has the onus of proof, otherwise the locus to challenge an action is baseless.

² Section 87(1) – (3)

³ Section 87(10)

Regulation for the Conduct of Political Party Primaries 2014

The Independent National Electoral Commission issued the Regulation pursuant to the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) particularly Paragraph 15, Part 1 of the Third Schedule and the Electoral Act 2010 (as amended).

The Regulation provides that a political party seeking to participate in any election organized by the Commission must conduct primaries, wherein all eligible members of the party must be given equal opportunity to participate in the primaries of the party for the purpose of selecting candidates for elective positions.⁴ The implication of this provision is that undue advantage must not be given to any aspirant over others. This connotes a high level of equity and fairness in the conduct of primaries in order to lay foundation for free and fair elections at inter-party contests.

Under paragraph 2 of the INEC Regulations, political parties must not create rules or impose conditions or set high expression of interest or nomination fees that could exclude aspirants on the basis of sex, religion, ethnicity, circumstance of birth or wealth. The rationale for this provision is that no one should be made to suffer disability based on sex, religion, ethnicity, circumstance of birth or wealth. This provision was violated in the recent party primaries, especially by the APC and the PDP. For example, the PDP’s Expression of Interest and Nomination forms

⁴ Paragraph 1 of the Regulation

were priced at N12 million for President, N6m for Governor, N3.5m for Senator, N2.5m for House of Representatives (HOR) and N600,000 for House of Assembly (HOA). Worse still, the APC set the cost of its nomination forms at N45m for President, N22m for Governor, N7m for Senator, N3.85m for House of Representatives and N850,000 for House of Assembly.⁵ The implication of these high fees is that the recent Constitution Alteration which reduced age requirement for the various elective offices is still of no effect; the fact being that the youths are not too young to run but too poor to run. In consequence, the APC disqualified one Kenneth Okonkwo, a Nollywood actor, from contesting for Enugu governorship election in 2019 following his inability to purchase the nomination and expression of interest forms.

Constitutions of Political Parties

It is a precondition for registration as a political party that any organisation seeking registration must deposit a copy of its constitution with INEC. The constitutions of the various political parties contain provisions regulating its internal conduct, including party primaries. Under Article 20iii of the APC Constitution, nomination of candidates for Local Government Council/Area Council; Chairman; State House of Assembly House of Representatives; Senate; Governor; and President shall be through direct or indirect primary election to be conducted at the appropriate level.

Similarly, Article 50(2) of the PDP Constitution makes provisions for conduct of primaries where it states as follows:

Notwithstanding the provisions of Chapter IV of this Constitution, the National Executive Committee shall regulate the procedure for selecting the Party's candidates for elective offices in the following manner prescribed below:

- (a) In the conduct of primaries for the Party's candidate for the post of the President of the Federal Republic of Nigeria, the primary shall be held at the National Convention of the Party specially convened for that purpose,
- (b) In the conduct of primaries for the Party's candidate for the post of Governorship of a State, the primary shall be held at the State Congress of the party specially convened for that purpose;
- (c) In the conduct of primaries for the Party's candidate for the post of Senator, the primaries shall be held at Senatorial Constituency headquarters;
- (d) In the conduct of primaries for the Party's candidate for the post of member of the House of Representatives, the primaries shall be held at the Constituency headquarters;

⁵ See "High Cost of Nomination Fees", Vanguard, September 17, 2018 <https://www.vanguardngr.com/2018/09/high-cost-of-nomination-fees/> (Accessed on 11/10/2018)

- (e) In the conduct of primaries for the Party's candidate for member of Local Government Council Chairman and House of Assembly, the primaries shall be held at the Local Government Constituency headquarter.

It must be reiterated here that neither the APC nor the PDP Constitution makes provision for automatic tickets in any form. In terms of consensus candidates, the PDP Constitution does not make provision for it. The APC Constitution which recognises consensus candidates only limits it to Councillorship elections. On this note, the APC Constitution provides as follows:

Nomination of Candidates for Councillorship shall be by direct primary election conducted at the Ward level. For the purpose of this primary election, Party members in every Ward shall vote by open-secret ballot for the candidates of their choice where there is no consensus, provided that where a candidate has emerged by consensus for an elective position, a vote of "yes" or "no" should be called to ensure that it was not an imposition which could breed discontent and crisis.⁶

The provision of Article 20(i)(a), which makes room for consensus does not apply to primary elections as it is restricted to election to the various posts within the party. Even at

that, the provision requires votes to confirm the consensus to avoid imposition.

It becomes obvious from the above provisions that, in addition to the provisions of the Electoral Act and INEC Regulation for Conduct of Party Primaries, the Constitutions of the various political parties stipulate the procedure for nomination of candidates at primary elections.

Mode of Conduct of Primaries Preparatory to the 2019 General Elections and Implications of the Legal Framework

Contrary to the provisions of the legal framework discussed above, some of the political parties adopted consensus as a mode of selecting candidates. As stated above, the only mode of conducting party primaries, which is a precondition for nomination of candidates is by democratic means through either direct or indirect primaries. Unfortunately, some of the political parties resorted to giving automatic tickets to some aspirants at the expense of other aspirants. For example, the APC gave all serving Senators in Niger State automatic tickets.⁷ This led to protests by other aspirants, leading to a press conference where they expressed their disappointment as follows:

If we stand for elections 10 times, we will win because we have the support of the people. We have got our result sheets that declared us the winners. Both chairman and secretary of

⁶ Article 20 ii(a)

⁷ Olaniyi, M.: "Aspirants reject automatic tickets for serving APC Senators in Niger", Daily Trust (online), October 9, 2018,

<https://www.dailytrust.com.ng/aspirants-reject-automatic-tickets-for-serving-apc-senators-in-niger.html> (Accessed on 10/10/18)

the first election committee signed our result sheets. What we got from a meeting with National Chairman is that there are automatic tickets for the three senators. We called this press conference to say that the mandate given to us can't be taken. It will be a political suicide for APC in Niger State. Is that democracy or dictatorship? We call on the national chairman and National Working Committee (NWC) to do the needful by giving us our certificates so that APC can win in Niger State. The three of us traversed all parts of our state. The incumbent senators can't do that because they have lost touch with their constituencies. The change the APC came up with is that there will be peace and justice.⁸

Similarly, it has been reported that the African Democratic Congress, ADC has given 118 serving lawmakers at the federal and state levels automatic tickets ahead of the 2019 general elections.⁹ The PDP is not left out of the automatic tickets distribution.¹⁰

A vital question that arises is whether or not political parties are given discretion to select candidates without primaries for the sake of inter-party contests for elective political

offices in Nigeria. There has been public outcry regarding the manner of conduct of primaries, especially of the two major political parties, the All Progressives Congress (APC) and the Peoples Democratic Party (PDP). Many candidates have been heard to complain that they were ousted from participating in the primaries of their respective political parties after purchasing nomination forms at exorbitant costs. In view of the definition of primaries in section 156 of the Act which has been affirmed in a plethora of judicial decisions such as *Udo v. Akpabio & Ors* (2013) LPELR – 22119 (CA); *INEC v. Hon. C.I.D. Maduabum* (2008) LPELR – 4316 (CA); *Alhassan & Anor v. Ishaku & Ors* (2016) LPELR – 40083 (SC), etc., as well as the copious provisions of sections 85 and 87 of the Electoral Act 2010 and INEC Regulations, political parties are bound to conduct democratic primaries which are transparent in the line with the spirit and letters of the instruments.

Menace of Parallel Primaries

Another virus in the conduct of party primaries in Nigeria is the challenge of parallel primaries within the same political party often facilitated by disagreements regarding party leadership and choice of candidates by party officials. In Ogun State, two factions of the State Chapter of the PDP held parallel governorship primaries in Abeokuta on 30th September 2018 to elect governorship flag bearers for the party ahead

⁸ Ibid

⁹ See “ADC rewards 118 lawmakers with automatic tickets” The Sun (Online), 7th September 2018 <http://sunnewsonline.com/adc-rewards-118-lawmakers-with-automatic-tickets/> (Accessed on 10/10/18)

¹⁰ See “STUNNING: PDP Gives Automatic Tickets To NASS Members” <https://www.calitown.com/stunning-pdp-gives-automatic-tickets-to-nass-members/> (Accessed on 10/10/18)

of the 2019 polls.¹¹ In another development, two candidates, Mr. Tonye Cole and Senator Magnus Abe, emerged winners of the parallel governorship primaries conducted by both factions of the APC in Rivers State. Cole came out victorious in the indirect governorship primary held in Port Harcourt on September 30 2018 when he polled 3,329 votes while Abe won the direct governorship primary of the APC conducted in the three senatorial districts of Rivers State with 144,929 votes.¹² Apart from the APC and the PDP, other political parties have also been found in the same web of parallel primaries. For example, Dr. Alex Otti and Chief Chike Udensi, emerged candidates of the governorship parallel primaries of the All Progressive Grand Alliance (APGA) in Abia for the 2019 general elections.¹³

Cries of candidate's imposition, parallel congresses, undemocratic conducts and mass protest have greeted the outcome of party primaries across the states of the federation. The disagreement and anger generated by the undemocratic conduct associated with the primaries have culminated in threat of mass defection from some political parties, with a legion of litigations pending in the courts. This is definitely inimical to sustainable internal democracy among political parties in Nigeria.

Recommendations

In view of the forgoing analysis, this brief makes the following recommendations:

- a. The INEC must be awake to its responsibility of monitoring the electoral process, including party primaries. The current practice of merely observing party primaries is not good enough; it should move ahead to actively participate in the conduct of primaries.
- b. The Electoral Act should be amended to give INEC powers to conduct party primaries. This will go a long way in eradicating manipulation by political parties in terms of nomination of candidates from primaries. The law should remove party primaries from being entirely a party affair.
- c. The Electoral Act should be further amended to set a ceiling for cost of nomination forms chargeable by political parties. This will be a check against indirect ouster of aspirants through high cost of nomination forms.
- d. Due consideration should be given to the issue of independent candidacy to reduce the effect of party politics on political participation.

Conclusion

¹¹ "Ogun PDP holds parallel governorship primaries" Vanguard (online), 30th September 2018 <https://www.vanguardngr.com/2018/09/ogun-pdp-holds-parallel-governorship-primaries/> (Accessed on 10/10/2018)

¹² Itode, S. and Akasike C.: "Rivers: Cole, Abe emerge winners as explosions rock APC parallel primaries", Punch, 1st October 2018 <https://punchng.com/rivers-cole-abe-emerge-winners-as-explosions-rock-apc-parallel-primaries/> (Accessed on 10/10/2018). In Delta State, Utomi, Ogboru Emerged Delta APC Gov Candidates

at Parallel Primaries. Similarly, the Peoples Democratic Party (PDP), Borno, on 30th September, held parallel primaries to elect candidates to contest the 2019 governorship election in the state.

¹³ See "Otti, Udensi emerge APGA governorship candidates in parallel primaries", The Eagle Online, October 5 2018, <https://theeagleonline.com.ng/otti-udensi-emerge-apga-governorship-candidates-in-parallel-primaries/> (Accessed on 11/10/2018)

The process for the primaries must be democratic, open and transparent. Above all, it must guarantee the equal participation of party members and aspirants. Political parties should see themselves as agents of political engineering which is at the heart of democracy in Nigeria. The recent party primaries were characterised with high level of exclusion, which came in the form of high cost of nomination and expression of interest forms, undue disqualifications, impositions, etc. This implies that the largest chunk of our

population and indeed the electorates were deprived of the opportunity of running for offices in the forthcoming elections. Democracy should be inclusive and participatory in nature. On that note, those who are saddled with the responsibility of running the affairs of political parties should put sustenance of Nigeria's democracy on their priority list as intra party democracy is central to the survival of democratic governance.